

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**BAPTIST HEALTH NURSING AND
REHABILITATION CENTER, INC.**

and

**Cases 03-CA-153365
03-CA-160251**

**1199 SEIU UNITED HEALTHCARE
WORKERS EAST**

**MOTION TO WITHDRAW EXCEPTIONS AND REMAND CASE TO THE
REGIONAL DIRECTOR FOR WITHDRAWAL OF COMPLAINT**

The undersigned, pursuant to Section 102.47 of the Board's Rules and Regulations, as amended, hereby files this motion requesting that the Board approve the withdrawal of the General Counsel's exceptions and remand the above-captioned cases to the Regional Director for Region Three for the purpose of withdrawing the complaint.

1. On October 23, 2015, the Regional Director for Region Three issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in the above matters. The Consolidated Complaint alleges that Respondent violated Section 8(a)(1) and (5) of the Act by suspending and later discharging two employees before a contract was implemented and without providing the Union notice or the opportunity to bargain prior to imposing the discretionary suspensions and discharges.

2. Administrative Law Judge Geoffrey L. Carter (ALJ Carter) heard this matter on January 26 and 27, 2016.

3. On March 11, 2016, ALJ Carter issued a Decision in the above-captioned matters finding that Respondent did not violate Section 8(a)(1) and (5) of the Act, as alleged. On April

8, 2016, the General Counsel filed exceptions to ALJ Carter's findings and the case is pending before the Board.

4. On August 26, 2016, the Board decided *Total Security Management Illinois I, LLC*, 364 NLRB No. 106, which held that discretionary discipline is a mandatory subject of bargaining and that employers may not impose certain types of discipline unilaterally. However, the Board concluded that retroapplication of its holding is inappropriate and dismissed the allegation that the employer violated Section 8(a)(5) of the Act by unilaterally imposing the discretionary discharges at issue. The Board announced that its holding in *Total Security* will be applied only prospectively. Thus, *Total Security* addresses the underlying issues in the above-captioned matters.

5. Based on the above, the General Counsel respectfully requests the withdrawal of its exceptions to ALJ Carter's Decision. The General Counsel further requests that the Board remand the above-captioned matters to the Regional Director for Region Three for the purpose of withdrawing the Consolidated Complaint.

DATED at Buffalo, New York, this 14th day of September, 2016.

/s/ Jessica L. Noto

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